

# COHENMILSTEIN

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June 21, 2018

## Via ECF

Hon. Vince Chhabria  
San Francisco Courthouse, Courtroom 4 – 17th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Re: *In Re: Facebook, Inc. Consumer Privacy User Profile Litigation*,  
Case No. 18-md-02843-VC**

Dear Judge Chhabria:

Pursuant to PTO No. 1, Andrew N. Friedman of Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) requests consideration for appointment as Lead Counsel in the above-captioned litigation. This case requires counsel with extensive experience and resources. For over 45 years, Cohen Milstein has been a leading class action firm, recovering tens of billions of dollars for injured plaintiffs.<sup>1</sup> Focusing exclusively on class actions and complex litigation at the firm for over 32 years, I co-chair the firm’s Consumer Protection practice group. My proven record of spearheading the successful prosecution and resolution of major class actions, my ability to work well with others, along with the firm’s abundant resources, make me ideally suited to lead this litigation.

### **A. Knowledge and Experience Prosecuting Class and MDL Actions.**

Cohen Milstein has earned recognition as a “class-action powerhouse” (*Forbes*), “the most effective law firm in the U.S. for lawsuits with a strong social and political component” (*Corporate Legal Times*), one of “America’s 25 Most Influential Law Firms” (*The Trial Lawyer*), and one of the “Most Feared Plaintiffs Law Firms” (*Law360*). This year, *Law360* named the Consumer Protection practice group that I co-chair as one of the top five Privacy Practice Groups in the country. In addition, I, and a number of my partners, have repeatedly been named Washington D.C. “Super Lawyers.”

Cohen Milstein and I have demonstrated a commitment to protecting consumers in numerous cases, including those in the data breach and privacy areas. Among my notable achievements is my current work as Co-Lead Counsel in *In re Anthem, Inc. Data Breach Litig.* (N.D. Cal.), where I have led a team of attorneys that aggressively prosecuted a data breach impacting nearly 80 million consumers.<sup>2</sup> Under my leadership, my team completed voluminous expert and fact discovery (nearly two hundred depositions and 4 million pages of documents), and fully briefed class certification. I also negotiated a record \$115 million settlement fund, far exceeding any previous data breach settlement. In addition to compensating class members, the Settlement, which is expected to be approved next month, requires Anthem to implement or

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<sup>1</sup> A copy of Cohen Milstein’s resume is attached as Exhibit A.

<sup>2</sup> This team included a steering committee of Girard Gibbs LLP and Lieff Cabraser Heimann & Bernstein LLP and significant support from Stueve Siegel Hanson LLP.

maintain material, specific changes to its data security practices.

Other privacy and data breach matters on which my firm and/or I have worked include: *In re Equifax, Inc., Customer Data Security Breach Litig.* (N.D. Ga.) (A. Friedman Steering Committee member on consumer side of data and privacy case impacting nearly 150 million people and co-chair of the Expert Committee)<sup>3</sup>; *In re The Home Depot, Inc. Customer Data Sec. Breach Litig.* (N.D. Ga.) (A. Friedman Steering Committee member on financial institution side of data and privacy case, member of several subcommittees, and head of the Expert Committee)<sup>4</sup>; *In Re: Vizio, Inc., Consumer Privacy Litig.* (C.D. Cal.) (A. Friedman Steering Committee Member in data and privacy case involved in briefing and discovery successfully defending two rounds of motions to dismiss)<sup>5</sup>; *Landwher, et al. v. AOL, Inc.* (E.D. Va.) (Co-Lead Counsel in nationwide class action involving violations of the Electronic Communications Privacy Act arising out of AOL's purposeful public release of search data of more than 650,000 members and users; resulted in \$5 million settlement); *Nader v. Capital One Bank (USA), N.A.* (C.D. Cal.) (A. Friedman one of principal counsel in litigation involving bank covertly recording outbound customer service calls; resulted in \$3 million settlement); and *In re Google Street View Elec. Comm'n Litig.* (N.D. Cal.) (Co-Lead Counsel on behalf of a nationwide class regarding Google's intentional interception of electronic communications sent over open, non-secured wireless internet connections via its "Street View" technology without the knowledge or authorization of class members).<sup>6</sup>

My firm and I have played leadership roles in countless other consumer cases that have yielded significant recoveries on behalf of consumers including the successful prosecution and resolution of several recent high-profile cases: *In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Prac. & Prod. Liab. Litig.* (E.D. Va) (firm was Co-Lead Counsel in nationwide class case involving flooring with excessive formaldehyde; \$36 million settlement preliminarily approved)<sup>7</sup>; and *In re Caterpillar, Inc., C13 and C15 Engine Prod. Liab. Litig.* (D.N.J.) (firm was Co-Lead Counsel in nationwide settlement of \$60 million for defective heavy-duty diesel engines).

I was sole Lead Counsel in *Khoday v. Symantec Corp.* (D. Minn.), which resulted in a \$60 million settlement for consumers deceived by ecommerce sellers. I was also instrumental in successfully resolving the following cases: *In re General Motors Dex-Cool Products Liab. Litig.* (S.D. Ill.) (worked principally with Girard Gibbs, represented consumers with engine damage caused by defective factory-installed coolant leading to dollar-for-dollar reimbursement for each consumer up to \$800); *Snyder v. Nationwide Mut. Ins., Co.* (Sup. Ct. NY Onondaga Cnty.) (one

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<sup>3</sup> Stueve Siegel Hanson LLP serves as one of Co-Lead Counsel and the Steering Committee includes Girard Gibbs LLP and Morgan & Morgan Complex Litigation Group.

<sup>4</sup> Co-Lead Counsel in this case includes Carlson Lynch Sweet & Kilpela LLP and the Steering Committee includes Zimmerman Reed PLLP, Beasley Allen Crow Mehtvin Portis & Miles, Murray Law Firm, and Lockridge Grindal Nauen PLLP.

<sup>5</sup> Co-Lead Counsel in this case include Girard Gibbs LLP and the other members of the Steering Committee include Carlson Lynch Sweet & Kilpela LLP and Zimmerman Reed PLLP.

<sup>6</sup> Co-Lead Counsel is Lieff Cabraser Heimann & Bernstein LLP.

<sup>7</sup> Co-Lead Counsel includes Hagens Berman Sobol Shapiro LLP.

of the principal counsel; obtained \$85 million for class of insureds); *Keithly v. Intelius, Inc.* (W.D. Wash.) (Co-Lead Counsel; reached settlements making \$12 million in cash and \$3.5 million in vouchers available to the class for deceptively enrolling consumers in a subscription-based service)<sup>8</sup>; and *Baird v. Thompson Consumer Electronics* (Cir. Ct. Madison Cnty., IL) (Co-Lead Counsel; reached agreement that made up to \$100 million available for persons who paid for unreimbursed repairs to televisions).

**B. Ability to Work Cooperatively with Others.**

My successes and reputation have garnered the respect of my colleagues in the plaintiffs' bar, those in the defense bar, and the mediators before whom I have appeared. Moreover, as noted in the cases referenced above, I have routinely worked successfully and collegially with many of the counsel seeking leadership positions in this action.<sup>9</sup>

**C. Access to Resources to Timely Prosecute This Case and Willingness and Ability to Commit to Time-Consuming Litigation.**

Cohen Milstein has over 90 attorneys and can quickly and efficiently complete any duties assigned by the Court. The firm will draw on experienced attorneys from its Consumer Protection practice.<sup>10</sup> Cohen Milstein routinely advances the costs of litigation, even where those costs are substantial, and litigates nearly all of its cases on a contingency basis.

**D. Ability to Maintain Reasonable Fees and Expenses.**

If appointed, I would ensure that all counsel involved maintain a daily and detailed record of their time spent and expenses incurred with this case, and that such matters are reported monthly. Express authorization of Lead Counsel would be required for any projects or work undertaken in this litigation for any time and expenses to be compensable. In addition, I would quarterly submit to the Court *in camera* reports reflecting hours billed in this matter by all consumer plaintiffs' counsel.

Given my experience and the firm's resources, I am confident I can be an asset to the Plaintiff Class and respectfully request appointment as Lead Counsel.

Respectfully Submitted,

/s/ Andrew N. Friedman  
Andrew N. Friedman

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<sup>8</sup> Co-Lead Counsel was Keller Rohrback LLP.

<sup>9</sup> While the Court invited applicants to include names of other counsel who support an applicant's appointment as lead counsel, I have not solicited the endorsement of any firm. Likewise, although I believe there are several other applicants who possess the abilities and resources to be Lead Counsel in this case, I have chosen not to endorse any candidates at present. As noted above, Cohen Milstein has had great success litigating cases with the major firms seeking positions here.

<sup>10</sup> The primary professionals who would be assisting Mr. Friedman can be found in Exhibit A.